

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20250106**

**Docket: A-6-24**

**Citation: 2025 FCA 3**

**CORAM: WEBB J.A.  
RENNIE J.A.  
LASKIN J.A.**

**BETWEEN:**

**REBEL NEWS NETWORK LTD**

**Appellant**

**and**

**CANADA (COMMISSIONER OF CANADA ELECTIONS)  
and ATTORNEY GENERAL OF CANADA**

**Respondents**

Heard at Toronto, Ontario, on November 27, 2024.

Judgment delivered at Ottawa, Ontario, on January 6, 2025.

**REASONS FOR JUDGMENT BY:**

**WEBB J.A.**

**CONCURRED IN BY:**

**RENNIE J.A.  
LASKIN J.A.**

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**REASONS FOR JUDGMENT**

**WEBB J.A.**

[1] The Deputy Commissioner of Canada Elections issued two Notices of Violation (NOVs) on January 12, 2021 for alleged violations of section 352 and subsection 353(1) of the *Canada Elections Act* (the Act) by Rebel News Network Ltd. (Rebel News). The only consequence of issuing the NOVs was the imposition of an Administrative Monetary Penalty of \$1,500 for each violation.

[2] The NOVs were issued in relation to certain lawn signs distributed by Rebel News during the election period commencing on September 11, 2019 (the date the Federal election was called) and ending on October 21, 2019 (the date the Federal election was held). The lawn signs included a reference to a book written by Ezra Levant.

[3] The NOVs were not issued in relation to the publication or distribution of the book displayed on the lawn signs, but only in relation to the distribution of the lawn signs. The NOVs did not restrict the publication or distribution of the book. Rather, the NOVs were issued because:

- (a) the lawn signs did not include the information as required by section 352 of the Act; and
- (b) Rebel News incurred at least \$500 in relation to the lawn signs and did not register as a third party for that Federal election as required by subsection 353(1) of the Act.

[4] Rebel News does not dispute that the information required by section 352 of the Act was missing from the lawn signs or that it incurred at least \$500 in relation to the lawn signs and did not register as a third party for that Federal election as required by subsection 353(1) of the Act. Rather, Rebel News' position is that the lawn signs were not election advertising for the purposes of the Act.

[5] Following a request to the Commissioner of Canada Elections (the Commissioner) for a *de novo* review of the decision of the Deputy Commissioner to issue the NOVs, the Commissioner, on July 12, 2021, maintained the issuance of the NOVs (File No.: 2019-0752).

[6] Rebel News sought judicial review of the decision of the Commissioner in the Federal Court (2023 FC 1650). Rebel News raised a number of issues as set out in paragraph 39 of the reasons of the Federal Court Judge:

- i. Is the Commissioner's decision reasonable?
  - a. Did the Commissioner apply the wrong legal test or fail to conduct the proper analysis?
  - b. Did the Commissioner ignore evidence or submissions?
  - c. Did the Commissioner appropriately consider *Charter* values?
- ii. Does the impugned clause, Paragraph 2(1)(b), limit Rebel News' rights under s 2(b) of the *Charter*?
- iii. If so, is the limitation justified under s 1 of the *Charter*?

[7] In detailed and comprehensive reasons, Strickland J. addressed all the issues raised by Rebel News and dismissed its application for judicial review.

[8] Rebel News has appealed this decision of the Federal Court. In this appeal, Rebel News has not raised any issue related to the *Canadian Charter of Rights and Freedoms*. The only issue raised by Rebel News is set out in paragraph 15 of its memorandum:

The overarching issue is whether Rebel News [is] guilty of offences pursuant to section 508.1 of the [*Canada*] *Elections Act*. More specifically, the issue on Appeal is whether it was reasonable for the Commissioner to find that the distribution of lawn signs was “election advertising” for the purposes of sections 2(1), 352, and 353 of the [*Canada*] *Elections Act*.

[9] As noted by the Supreme Court of Canada in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, at paragraph 10, this Court steps into the shoes of the Federal Court and “performs a *de novo* review of the administrative decision”. However, this Court noted in *Bank of Montreal v. Canada (Attorney General)*, 2021 FCA 189, leave to appeal to SCC refused, 39899 (April 7, 2022), at paragraph 4:

... this does not mean that the appellant can or should ignore the reasons given by the Federal Court in rejecting its application. Where, as is the case here, the Federal Court appears to have given a complete answer to all the arguments that it advances, an appellant bears a strong tactical burden to show on appeal that the Federal Court’s reasoning is flawed.

[10] The Federal Court determined that the standard of review applicable to the merits of the Commissioner’s decision that the distribution of the lawn signs by Rebel News was election advertising was reasonableness. Neither party in this appeal challenges the determination of the standard of review applicable to this issue.

[11] In its memorandum, Rebel News seeks to advance an argument based on paragraph (a) of the definition of “election advertising” in subsection 2(1) of the Act. This argument was not raised before the Commissioner. As noted by the Supreme Court of Canada in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61, at paragraphs 22 and 23, the Court “also has a discretion not to consider an issue raised for the first

time on judicial review where it would be inappropriate to do so”. The Supreme Court noted that a Court will not generally consider an issue raised for the first time on judicial review “where the issue could have been but was not raised before the tribunal”.

[12] The issue related to paragraph (a) of the definition of “election advertising” in subsection 2(1) of the Act could have been raised by Rebel News before the Commissioner. Rebel News acknowledged that it did not refer to this paragraph in any of its submissions to the Commissioner and that it did not specifically raise any argument related to this paragraph before the Commissioner. Rebel News focused its submissions to the Commissioner on paragraph (b) of the definition of “election advertising” in subsection 2(1) of the Act. The general rule stated above will apply and the argument related to paragraph (a) of the definition of “election advertising” in subsection 2(1) of the Act will not be considered in this appeal.

[13] “Election advertising” is defined in subsection 2(1) of the Act:

2 (1) The definitions in this subsection apply in this Act.

...

***election advertising*** means the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including by taking a position on an issue with which a registered party or candidate is associated. For greater certainty, it does not include

2 (1) Les définitions qui suivent s’appliquent à la présente loi.

[...]

***publicité électorale*** Diffusion, sur un support quelconque et pendant une période électorale, d’un message publicitaire qui favorise ou contrecarre un parti enregistré ou l’élection d’un candidat, notamment par une prise de position sur une question à laquelle est associé un parti enregistré ou un candidat. Il est entendu que ne sont pas considérés comme de la publicité électorale:

...

[...]

(b) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election;

b) la promotion ou la distribution, pour une valeur non inférieure à sa valeur commerciale, d'un ouvrage dont la mise en vente avait été planifiée sans égard à la tenue de l'élection;

[14] Rebel News does not dispute that it transmitted an advertising message to the public during an election period. Rebel News does not dispute that the lawn signs opposed the Liberal Party and the election of its leader and certain members of the Cabinet. Rather, Rebel News focuses on paragraph (b) of the definition of “election advertising”. Paragraph (b) provides, in part, that the promotion of a book (which would otherwise be election advertising) is not election advertising “if the book was planned to be made available to the public regardless of whether there was to be an election”.

[15] The Commissioner, in paragraph 23 of his reasons, cites paragraph (b) from the definition of election advertising and highlights the passage that is relevant in this appeal:

The relevant portion of the provision at paragraph 2(b) under “election advertising” clarifies that for greater certainty, election advertising does not include “the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election” [Emphasis added [by the Commissioner].] It is clear from the underlined passage that the so-called “book exemption” applies only in relation to a book that would have been published whether or not the election was called.

[16] Rebel News focuses on the immediately following paragraph in which the Commissioner states:

24. I am of the view that the clarification at paragraph 2(1)(b) of the Act does not apply in this case because Rebel News had planned the launch of the book to coincide with the election.

[17] Rebel News argues that the decision of the Commissioner that the distribution of the lawn signs which promoted the book was election advertising is not reasonable because paragraph (b) of the definition of election advertising states that the promotion of a book will not be election advertising “if the book was planned to be made available to the public regardless of whether there was to be an election”. Rebel News submits that the Commissioner effectively changed the test to determine if paragraph (b) of the definition of election advertising applies. Rebel News argues that the Commissioner only focused on whether the launch of the book was planned to coincide with the election and, having found that the launch of the book was planned to coincide with the election, the Commissioner found that paragraph (b) of the definition of election advertising did not apply.

[18] Rebel News pointed to other books that were launched around the time of the election. The other books also related to individuals running in the election. Rebel News submitted that simply timing the launch of a book to coincide with an election does not make the promotion of Ezra Levant’s book election advertising. However, whether the promotion of any other book that was launched around the time of the election would not be included as election advertising as a result of paragraph (b) of the definition of election advertising is not before us. The only issue before us is the whether the Commissioner’s decision (that paragraph (b) of the definition of election advertising did not apply to the distribution of the lawn signs in this matter) was reasonable.



[19] This argument with respect to the Commissioner effectively changing the provisions of paragraph (b) of election advertising was raised before the Federal Court and I agree with the analysis and conclusion of the Federal Court Judge as set out in paragraphs 80 to 82 of her reasons. I would adopt these reasons and this analysis.

[20] A fair reading of the Commissioner's reasons confirms that he was not creating a different test for the purposes of paragraph (b) of the definition of election advertising. In paragraph 23 of his reasons, the Commissioner, in quoting paragraph (b) of the definition of election advertising, highlighted the relevant test: "if the book was planned to be made available to the public regardless of whether there was to be an election". In the immediately following sentence, the Commissioner stated:

It is clear from the underlined passage that the so-called "book exemption" applies only in relation to a book that would have been published whether or not the election was called.

[21] This confirms that the Commissioner was focused on the test as set out in paragraph (b) of the definition of election advertising.

[22] The fact that Rebel News planned to launch the book to coincide with the election was relevant. It was a significant factual finding that formed part of the factual framework considered by the Commissioner in determining that paragraph (b) of the definition of election advertising did not apply, *i.e.* the book, that was promoted by distributing the lawn signs, was not planned to be made available to the public regardless of whether there was to be an election.

[23] The finding by the Commissioner that paragraph (b) of the definition of election advertising did not apply (and therefore that the distribution of the lawn signs was election advertising) was reasonable.

[24] Rebel News, during the hearing of the appeal, acknowledged that if the Commissioner's finding on the application of paragraph (b) of the definition of election advertising was reasonable, there was no need to address any other arguments raised by Rebel News. Therefore, the other arguments will not be addressed.

[25] As a result, I would dismiss the appeal with costs.

“Wyman W. Webb”

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J.A.

“I agree.

Donald J. Rennie J.A.”

“I agree.

J.B. Laskin J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-6-24

**STYLE OF CAUSE:** REBEL NEWS NETWORK LTD  
v. CANADA (COMMISSIONER  
OF CANADA ELECTIONS) *et al.*

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 27, 2024

**REASONS FOR JUDGMENT BY:** WEBB J.A.

**CONCURRED IN BY:** RENNIE J.A.  
LASKIN J.A.

**DATED:** JANUARY 6, 2025

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